IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.4136 OF 2006
IN
SUIT NO.805 OF 1996

State Bank of India ...Plaintiffs

Versus

M/s.Susan Generators Pvt Ltd & Ors. ...Defendants

Ms Pratibha Chalke i/by P.Shukla & Co for the Plaintiffs.

Shri H.H.Trivedi for the Defendants.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 28, 2007.

P.C.:

1. Heard the learned counsel appearing for the Plaintiffs in support of the Notice of Motion. I have also heard the learned counsel appearing for the Defendants who has opposed the Notice of Motion.

2. The prayer made in the Notice of Motion is for restoration of the suit which was dismissed for default on 18th August, 2005. The contention of the learned counsel appearing for the Defendants is that there is absolutely no cause shown in the affidavit in support of Notice of Motion for restoration of the suit. He submitted that the Notice of Motion deserves to be dismissed.

3. I have perused the affidavit in support of Notice of Motion. In paragraph No.4 thereof it is stated that though the suit was listed on the cause list on 18th August, 2005, the advocate's clerk did not watch the board properly and therefore, the advocate for the Plaintiffs could not appear before the Court. It is stated that the suit has been dismissed for default on account of default on the part of the advocate's clerk. It is stated that only in the first week of August 2006 when the Advocate for the Plaintiffs enquired in the Department that the Plaintiffs became aware of the dismissal of the suit.

4. Considering the aforesaid averments, a case is made out for restoration of the suit subject to payment of costs by the Plaintiffs to the Defendant Nos.1 to 3 who have contested the Notice of Motion.

5. Hence, the Notice of Motion is made absolute in terms of prayer clauses (a) and (b) subject to the Plaintiffs paying total costs of Rs.7,500/- to first to third Defendants within a period of six weeks from today. Payment of costs will be a condition precedent.

JUDGE